

Remarks

The Examiner has rejected claims 1 and 2 under 35 U.S.C. §103(a) as being unpatentable over McDaniel (US 4,501,266) in view of Vinciguerra et al. (US 5,554,158).

Claim 1 has been amended to include not only the limitations of claim 2, which has been canceled, but also to clearly set forth the feature that the post, with its flange is moveable axially and rotatably. When rotated to a first position at which the breadth is aligned with the gap, the post and flange may be moved axially through the gap. Following rotation to the defined second position the flange first and second ends may become engaged to the superior surface while the condylar engagement member of such apparatus is engaged to the first and second condylar portions. It is believed that, with this amendment, claim 1 is clearly patentable over the references to McDaniel and Vinciguerra et al. and any other references of record whether such references are taken alone or in combination with each other.

Initially, it should be noted that neither McDaniel or Vinciguerra et al. have any ability to grip the prosthesis as is clearly set forth in claim 1 as amended.

The reference to McDaniel is directed to a knee distraction device in which the condyle-engaging member 3 engages the condyles and the tibia-engaging member 2 engages the tibia. Those engagement members 2 and 3 are mounted such that the tibia-engaging member 2 is in a fixed position relative to the tube 4 and the condyle-engaging member 3 is mountable on a pair of shafts 9, each housed within a tube 4 such that the condyle engaging members 3 may be moved away from the tibia-engaging member 2 upon axial movement of the respective cylindrical shafts 9 in order to place a calibrated tensioning force on the ligaments.

The portion of McDaniel which the Examiner considers to be a flange (8) is not a flange at all but is really a knob used, upon rotation, for extending or retracting the

shafts 9 within the tubes 4. Even if the knob 8 were construed to be a "flange", it does not engage the prosthesis and is located nowhere near the prosthesis. In contrast, the flange as set forth in claim 1 is positioned and sized such that its ends 32A, upon rotation to the second position may engage the superior surface of the prosthesis while the condylar engagement member is engaged to the first and second condylar positions of the prosthesis.

The reference to Vinciguerra et al. is no more pertinent and, even when combined with the reference to McDaniel, does not disclose or suggest the invention as set forth in claim 1 as amended. Vinciguerra et al. is directed to an intercondylar notch cutter for posterior stabilized femoral knee prosthesis. Vinciguerra et al. admittedly has a pair of condyle articulating surfaces 36, 38 which are configured to slidably engage a condyle surface on a trial prosthesis; however, there is no ability whatsoever for Vinciguerra et al. to grip a prosthesis or a trial prosthesis. Additionally, there is no modification which could be made to Vinciguerra et al. based upon the teachings of McDaniel which would permit engagement of opposite sides of a femoral prosthesis as set forth in claim 1.

The cutter of Vinciguerra et al. utilizes a bit 12 which is supported by a guide sleeve to cut that portion of the femur which lies between the condyles. The notch cutter of Vinciguerra et al. performs the cutting while the condyle articulating surfaces 36, 38 are engaged to a condyle surface of a trial prosthesis.

It is respectfully submitted that engagement of one surface of each of a pair of condyles does not disclose or suggest the feature set forth in claim 1 of apparatus which has the capability to engage both the superior surface of the prosthesis and the first and second condylar portions on the opposite side of such superior surface. It is respectfully submitted that it would be unobvious to a person skilled in the art and having knowledge of the references to conceive the invention as set forth in claim 1 as amended.

The other references cited by the Examiner were cited for specific features of the dependent claims and also do not disclose or suggest the features set forth in claim 1 as amended. Claims 3 – 7 are each dependent upon claim 1, either directly or indirectly and are also believed to be allowable. Claim 2 has been canceled. In view of the foregoing reconsideration of the application and allowance of claims 1 and 3 – 7 are respectfully solicited. The allowance of claims 15 – 19 is noted with appreciation.

Claims 8 – 14 may be canceled from this application subject to the right of Applicants' to file a divisional application based thereon.

Respectfully submitted,

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